

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of NICHOLAS JAY WHIPPLE, JR.,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RACHAEL L. MARR,

Respondent-Appellant,

and

NICHOLAS WHIPPLE,

Respondent.

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Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

NICHOLAS WHIPPLE,

Respondent-Appellant,

and

RACHAEL L. MARR,

Respondent.

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UNPUBLISHED

October 20, 2009

No. 291103

Oakland Circuit Court

Family Division

LC No. 2008-748971-NA

No. 291104

Oakland Circuit Court

Family Division

LC No. 2008-748971-NA

Before: Saad, C.J., and O'Connell, and Zahra, JJ.

PER CURIUM.

In these consolidated appeals, respondents appeal the trial court's order that terminated their parental rights to the child at the initial dispositional hearing pursuant to MCL 712A.19b(3)(g) and (j). For the reasons set forth below, we affirm.

I. Facts

The child sustained a severe head injury, resulting in a subdural hematoma and retinal hemorrhaging, when he was approximately seven months old. The injury was determined to be nonaccidental, but the underlying cause and the person responsible for the injury was never determined because several different people had cared for the child during the period when the injury could have been inflicted.<sup>1</sup> The evidence indicated that both respondents were young, inexperienced parents, and that their relationship was marked by domestic violence and substance abuse. In addition, they were unable to support themselves and relied on friends and relatives for support and housing. Respondent-mother was also diagnosed with bipolar disorder for which she did not regularly seek treatment.

II. Analysis

Respondents argue that the trial court erred when it found that the statutory grounds for termination, §§ 19b(3)(g) and (j), were established by clear and convincing evidence. They also argue that it was premature to terminate their parental rights at the initial dispositional hearing without providing services to address the various issues in the case and to facilitate their reunification with their child.<sup>2</sup>

The Department of Human Services is generally required to make reasonable efforts to rectify the conditions that caused a child's removal from a parent's home by adopting a service plan, MCL 712A.18f(4), and to provide necessary services to facilitate the return of the child. See *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000); see also *In re Rood*, 483 Mich 73, 104-106; 763 NW2d 587 (2009). In an appropriate case, however, a trial court is permitted

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<sup>1</sup> Although petitioner also requested that respondents' parental rights be terminated under §§ 19b(3)(b)(i) and (b)(ii), the trial court declined to terminate respondents' parental rights under these additional grounds because it could not determine who was responsible for the child's injury.

<sup>2</sup> Petitioner has the burden of proving a statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(J). A finding is clearly erroneous when the reviewing court has a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). In reviewing the trial court's findings, deference is accorded to the trial court's assessment of the credibility of the witnesses who appeared before it. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

to terminate parental rights at the initial dispositional hearing, MCR 3.977(E), and when termination is requested at the initial dispositional hearing, it is unnecessary to develop and provide a service plan to reunite the family because the goal is termination, not reunification. MCL 712A.18f(3)(d); MCL 712A.19b(4). Petitioner need not provide services if it justifies its decision not to do so. See MCL 712A.18f(1)(b); *In re Terry*, *supra* at 25 n 4.

Here, the condition that led to the child's removal from the home was a serious injury to the child. Apart from that injury, however, the evidence showed that both respondents had many significant problems that prevented them from properly caring for a child. Respondent-mother has a history of mental illness for which she did not consistently seek treatment. In addition, both respondents have a history of drug abuse, and their relationship has been marked by domestic violence. Respondents were also dependent on others for support and housing, and they both lacked appropriate parenting role models in their life. They were inadequately equipped to provide for and attend to their own needs, let alone to care for an infant child. Furthermore, the evidence indicated that respondents minimized the seriousness of their problems, were not forthcoming about their situation, and lacked insight into how their conduct affected their child. Their prognosis for improving their circumstances was poor.<sup>3</sup>

Considering the circumstances of both respondents and the serious injury already received by the child, petitioner was justified in seeking termination of parental rights at the initial dispositional hearing and not providing services toward reunification.

Further, the trial court did not clearly err when it held that the statutory grounds for termination were established by clear and convincing evidence with respect to both respondents. The evidence of the child's severe injury and his exposure to an environment marked by domestic violence and substance abuse showed that respondents failed to provide proper care for the child. In addition, both respondents were unemployed, continued to depend on others for housing and support, and minimized the seriousness of their domestic violence and substance abuse issues. According to Dr. J. Scott Allen, Jr., both respondents were inclined to place their own interests ahead of those of the child, and respondent-mother lacked the motivation to improve her circumstances. In light of this evidence, the trial court did not clearly err in finding that there was no reasonable expectation that respondents would be able to provide proper care and custody for the child within a reasonable time. Therefore, termination was warranted under § 19b(3)(g).

Even stronger evidence supported termination under § 19b(3)(j). The child had already sustained a severe head injury. Although the trial court was unable to find that either respondent was directly responsible for the injury, respondents' unstable circumstances and the various issues in their lives contributed to an environment that placed the child at risk of further harm.

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<sup>3</sup> Although the statutory grounds for termination were required to be established by legally admissible evidence, MCR 3.977(E)(3), respondents stipulated to the admission of Dr. J. Scott Allen, Jr.'s report of their psychological evaluations, in lieu of calling Dr. Allen to testify. Therefore, the report was properly considered by the trial court. Reversal may not be premised on "error to which the aggrieved party contributed by plan or negligence." *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997).

Dr. Allen concluded that respondents' various parental deficiencies and shortcomings impaired their functioning to such an extent that they presented a significant risk of harm to the child. Thus, the trial court did not clearly err in finding that termination was also justified under § 19b(3)(j).

Respondent-mother also argues that termination of her parental rights was not in the child's best interests.<sup>4</sup> Considering the serious injury the child had already suffered, respondent-mother's history of substance abuse, domestic violence, unstable mental health, and inability to properly care for herself, as well as her poor prognosis for improving her situation, and Dr. Allen's opinion that the child would be at significant risk of harm if reunited with respondent-mother, the trial court did not clearly err when it ruled that termination of her parental rights was in the child's best interests.

Affirmed.

/s/ Henry William Saad

/s/ Peter D. O'Connell

/s/ Brian K. Zahra

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<sup>4</sup> Once a statutory ground for termination is established by clear and convincing evidence, the trial court shall terminate parental rights if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). The trial court's best interests decision is also reviewed for clear error. *In re Trejo, supra*, 462 Mich at 356-357.